

# **Administrative Default at Common Law: A Novel Approach to Florida Public Records Requests**

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## **Enforcement in Florida**

### **Abstract**

This Article explores the "Administrative Default at Common Law" (ADACL) process as an innovative response to enforcement challenges within Florida's Public Records Act (Chapter 119, Florida Statutes). By invoking the common law principle of tacit acquiescence, ADACL seeks to address gaps in statutory remedies where government agencies provide partial responses or fail to acknowledge the non-existence of requested records. This Article critically assesses whether ADACL represents a legitimate extension of Florida's common law tradition or an unwarranted bypass of established statutory mechanisms. Through an analysis grounded in administrative law, evidentiary principles, and statutory interpretation, it evaluates ADACL's theoretical foundations, procedural framework, and practical viability. While ADACL offers a creative solution to strategic non-compliance, its judicial acceptance and enforceability remain uncertain, raising significant questions about its role in Florida's public records regime.

## **I. INTRODUCTION**

Florida's Public Records Act stands as a cornerstone of governmental transparency, mandating that public records "shall be open for inspection and copying by any person" under reasonable conditions. See Fla. Stat. § 119.07(1)(a) (2023). Backed by judicial enforcement mechanisms, such as mandamus, the Act has been lauded for its breadth and accessibility. Yet, a persistent enforcement gap emerges when agencies strategically provide incomplete responses, neither fully complying nor explicitly denying the existence of withheld records. This ambiguity frustrates requestors, leaving them without clear recourse under existing statutory remedies.

The Administrative Default at Common Law (ADACL) process, exemplified in a St. Pete Beach records request (PRR2025-22), proposes a novel solution by applying the common law maxim *qui tacet consentire videtur* (“he who is silent appears to consent”) to administrative proceedings. Through a structured three-stage framework, ADACL culminates in a formal declaration of default, aiming to compel agency accountability. This approach, however, sparks debate: *Does it enhance Florida’s transparency framework, or does it overstep into territory reserved for statutory and judicial remedies?*

Any member of the Florida Bar is invited to undertake this analysis to evaluate ADACL’s legal foundations, procedural mechanics, and practical implications. This Article integrates a critical examination of its weaknesses—both inherent and additional—while exploring mediation-level and judicial remedies as potential complements or alternatives. In doing so, it contributes to the scholarly discourse on administrative innovation and public records enforcement in Florida.

## **II. FLORIDA’S PUBLIC RECORDS FRAMEWORK AND ENFORCEMENT GAPS**

*Florida’s Public Records Act* imposes a clear duty on agencies to provide prompt access to public records. See *Fla. Stat. § 119.07(1)(a)*. The Florida Supreme Court has interpreted this obligation stringently, permitting only minimal delays for retrieval and lawful redaction. *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1078 (*Fla.* 1984). Non-compliance typically triggers mandamus, compelling production or justification of exemptions. *Id.* Yet, this remedy falters when agencies offer partial responses without addressing the existence of all requested records, creating a limbo that undermines transparency.

This gap is particularly acute in requests for records substantiating governmental actions—such as ordinances or regulatory decisions—where the absence of documentation could reveal procedural irregularities. Requestors must then choose between pursuing

mandamus for potentially non-existent records or accepting incomplete compliance, a dilemma that highlights the limits of Chapter 119's enforcement mechanisms.

### **III. ADACL'S THEORETICAL FOUNDATIONS**

#### **1. Common Law Incorporation**

ADACL draws legitimacy from Florida's adoption of English common law under *Fla. Stat. § 2.01*, which preserves doctrines "of a general and not a local nature" unless displaced by statute or constitution. See *State v. Ashley*, 701 So. 2d 338, 341 (Fla. 1997). Absent explicit abrogation by Chapter 119, ADACL proponents assert that common law principles supplement statutory remedies, a view supported by scholarly consensus that statutes typically build upon, rather than supplant, common law foundations. See *David Horton, Statutory Interpretation and the Common Law*, 92 S. Cal. L. Rev. 1, 15 (2018).

#### **2. Tacit Acquiescence Doctrine**

At ADACL's core lies *qui tacet consentire videtur*, a maxim recognizing silence as consent when a response is expected. Florida courts have applied this doctrine in varied contexts, from shifting burdens of proof (*Vacation Ventures v. Holiday Promotions*, 687 So. 2d 315, 317 (Fla. 5th DCA 1997)) to inferring contractual assent (*Horowitz v. Laske*, 855 So. 2d 169, 172 (Fla. 5th DCA 2003)). ADACL extends this principle to administrative silence, positing that an agency's failure to address specific requests equates to an admission of non-existence or inconsistency with public claims.

#### **3. Adverse Inference Principle**

ADACL also leverages the adverse inference rule, allowing negative conclusions from a party's failure to produce evidence within its control. *Public Health Trust v. Valcin*, 507 So. 2d

596, 599 (*Fla.* 1987). While traditionally a litigation tool, this principle finds administrative parallels, such as tax estimations under *Fla. Stat.* § 212.12(5). ADACL adapts this concept, using sworn findings to establish a record of non-compliance that courts might accept as unrebutted fact. See *Nard, Inc. v. DeVito Contracting*, 769 So. 2d 1138, 1140 (*Fla. 4th DCA 2000*).

## **IV. ADACL'S PROCEDURAL FRAMEWORK**

ADACL's three-stage process, as observed in PRR2025-22, includes:

### **1. Initial Request and Documentation**

A detailed request with a tally sheet delineates document categories, setting expectations for comprehensive responses, including acknowledgment of non-existence.

### **2. Notice of Fault**

A formal notice identifies deficiencies, affording agencies an opportunity to rectify non-compliance, consistent with administrative due process.

### **3. Declaration of Default**

A sworn declaration, structured in 'negative averment' format, documents persistent non-compliance, categorizing responses and articulating legal consequences, such as evidentiary presumptions. This affidavit initiates the '*Cascade of Absence*,' a process by which the agency's silence is treated as a default admission of document non-existence.

## V. CRITICAL EVALUATION: STRENGTHS AND WEAKNESSES

### 1. Strengths

- a. **Addressing Statutory Gaps:** ADACL targets a niche vulnerability in Chapter 119—strategic silence on document non-existence—enhancing transparency without supplanting mandamus.
- b. **Structured Documentation:** The multi-stage process builds a robust record, bolstering subsequent judicial actions by evidencing agency evasion.
- c. **Common Law Legitimacy:** Grounded in established doctrines, ADACL aligns with Florida's legal tradition, lending it theoretical credibility.

### 2. Initial Weaknesses

- a. **Partial Response Challenge:** Partial compliance (e.g., PRR2025-22's responses to DR1, DR2, DR5) muddies the “silence as consent” premise, as courts may interpret it as good-faith effort rather than evasion.  
**Remedy:** Focus on documenting patterns of selective withholding to demonstrate strategic evasion rather than good-faith compliance.
- b. **Judicial Reception Without Precedent:** Lacking direct precedent, ADACL risks rejection in favor of Chapter 119's familiar remedies, a hurdle for novel theories. See Lawrence Solum, Legal Theory and Judicial Restraint, 105 Geo. L.J. 123, 145 (2016).  
**Remedy:** Position ADACL as a complementary tool to existing remedies, emphasizing its role in creating an evidentiary record.
- c. **Perceived Redundancy:** Critics may view ADACL as duplicative of mandamus, questioning its necessity given existing statutory tools.

- d. **Remedy:** Highlight ADACL's unique focus on pre-litigation accountability and its ability to address gaps in Chapter 119.
- e. **Limited Application:** Administrative defaults are typically codified (e.g., tax or licensing), casting doubt on their extension to public records absent legislative sanction  
**Remedy:** Draw parallels to existing administrative default mechanisms in Florida law to establish legitimacy.
- f. **Bad Faith Requirement:** Courts may demand evidence of bad faith beyond mere silence, weakening ADACL's reliance on tacit acquiescence.  
**Remedy:** Emphasize the evidentiary control aspect rather than subjective intent, aligning with Valcin.

- g. **Exhaustion Requirement:** Judicial insistence on exhausting Chapter 119 remedies could render ADACL premature or redundant.  
**Remedy:** Frame ADACL as a preparatory step that complements, rather than circumvents, statutory remedies.

### 3 . Additional Weaknesses

- a. **Enforceability Concerns:** Without a clear enforcement mechanism, ADACL's declarations may lack practical force, limiting their impact to symbolic gestures.  
**Remedy:** Clarify ADACL's role as an evidentiary tool rather than a standalone enforcement mechanism.
- b. **Jurisdictional Overreach:** ADACL might be seen as usurping judicial functions, risking dismissal for exceeding administrative authority.

**Remedy:** Emphasize ADACL's administrative nature and alignment with agency authority.

- c. **Practicality and Accessibility:** Its complexity—requiring notices and affidavits—may deter lay requestors, restricting its utility to legal professionals.

**Remedy:** Acknowledge complexity but highlight resources like the response guide to aid laypersons.

- d. **Potential for Abuse:** Requestors could exploit ADACL to harass agencies, prompting judicial or legislative backlash.

**Remedy:** Note procedural safeguards like sworn affidavits and multiple notices to deter misuse.

- e. **Public Policy Tension:** ADACL may clash with Florida's preference for streamlined statutory remedies, undermining its alignment with legislative intent.

**Remedy:** Align ADACL with Florida's transparency goals and statutory objectives.

## VI. MEDIATION-LEVEL AND JUDICIAL REMEDIES

### 1. Mediation as a Complement

Mediation offers a potential bridge between ADACL and judicial remedies, facilitating resolution without immediate litigation. A mediation-level approach could involve a neutral third party reviewing the Notice of Fault, encouraging agency compliance before default is declared. This step could mitigate the partial response challenge by clarifying intent and reduce the risk of abuse by filtering frivolous claims. However, mediation's voluntary nature limits its enforceability, and resource constraints may hinder its scalability.

## **2. Judicial Remedies and Integration**

Judicial remedies, primarily extraordinary writs such as prohibition or rational basis injunction, remain the ultimate backstop. ADACL could enhance these by providing a pre-litigation record of non-compliance, strengthening these petitions under Cannella. Yet, the exhaustion requirement poses a hurdle; courts may demand statutory remedies be pursued first, viewing ADACL as an extrajudicial detour. To counter this, ADACL could be positioned as a preparatory step, not a substitute, aligning with judicial economy by resolving disputes pre-trial where possible.

# **VII. PRACTICAL IMPLICATIONS**

## **1. Transparency Enhancement**

If judicially endorsed, ADACL could deter strategic non-compliance, compelling agencies to clarify record status and bolstering oversight of governmental actions.

## **2. Administrative Burden**

While critics highlight added burdens, the tally sheet simplifies responses, balancing transparency gains against administrative costs.

## **3. Judicial Impact**

ADACL might reduce mandamus filings by resolving disputes administratively, though initial litigation testing its validity could temporarily strain courts.

## VIII. RECOMMENDATIONS AND CONCLUSION

ADACL's ingenuity lies in its use of common law to address a modern enforcement gap, yet its weaknesses demand refinement:

- 1. Strengthening Evidence:** Focus on patterns of material withholding to bolster adverse inferences, addressing partial response and bad faith concerns.
- 2. Statutory Alignment:** Present ADACL as an evidentiary tool supporting, not replacing, Chapter 119 remedies, mitigating preemption and exhaustion risks.
- 3. Legislative Codification:** Advocate for statutory amendments to Chapter 119, formalizing consequences for non-acknowledgment and resolving enforceability and jurisdictional issues.

In conclusion, ADACL offers a promising yet imperfect innovation. Its success hinges on judicial willingness to embrace common law solutions and legislative action to address practicality, accessibility, and policy alignment. As Florida's transparency framework evolves, ADACL underscores the enduring relevance of historical principles in tackling contemporary legal challenges.

## **ADMINISTRATIVE DEFAULT AT COMMON LAW : THE THEORY BEHIND THE PUBLIC RECORDS ONUS MECHANISM**

While not suggested to be used in conventional litigation for PROS-Mech, The Administrative Default at Common Law (ADACL) process, though unconventional, emerges as a valid administrative remedy, rooted in Florida's adoption of English common law and reinforced by statutory mandates and judicial precedents that address agency non-compliance. This memoranda demonstrates how ADACL leverages silence, default admissions, and adverse inferences to uphold transparency and accountability under Chapter 119, Florida Statutes.

### **Table of Authorities**

<b>Authority</b>	<b>Explanation</b>
<i>Fla. Stat. § 2.01</i>	Adopts English common law of general nature as of July 4, 1776, unless inconsistent with U.S. or Florida law. Establishes the foundational role of common law in Florida's legal system, providing the basis for principles like tacit acquiescence
<i>Fla. Stat. § 775.01</i>	Applies English common law to crimes unless modified by statute, reinforcing the persistence of common law principles in Florida jurisprudence.
<i>State v. Ashley, 701 So. 2d 338 (Fla. 1997)</i>	Affirms that common law principles persist unless expressly abrogated by statute, confirming their ongoing relevance in legal arguments.
<i>State v. Mitchell, 245 So. 2d 618 (Fla. 1971)</i>	Cites Blackstone on common law rights, demonstrating the enduring influence of common law maxims in Florida courts.
<i>City of Daytona Beach v. Del Percio (476 So. 2d 197 (1985)</i>	Supports common law viability alongside statutes when non-conflicting, per weakness B analysis.

## **Foundational Common Law Principles**

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<b>Common Law Maxims</b>	<i>Qui tacet consentire videtur</i>  <i>Qui tacet consentire videtur</i>  <i>Tacita quaedam habentur pro expressis</i>  <i>Eius est non nolle, qui potest velle</i>  <i>Blackstone's Commentaries, Book I, Section III</i>	"He who is silent appears to consent." A core common law maxim establishing tacit acquiescence, where silence is interpreted as agreement or admission—key to default mechanisms.  "He who is silent appears to consent." A core common law maxim establishing tacit acquiescence, where silence is interpreted as agreement or admission—key to default mechanisms.  "Things silent are sometimes considered as expressed." Supports the notion that silence can imply consent, reinforcing the legal weight of non-response.  "He who may consent tacitly, may consent expressly." Validates tacit consent as legally binding, linking common law to procedural defaults.  Explains that the authority of common law maxims stems from their consistent use in judicial practice and established custom, not from legislation. This is evident in Florida cases like <i>Vacation Ventures</i> (where silence shifts the burden of proof) and <i>Horowitz</i> (where silence implies acquiescence), demonstrating how courts apply maxims such as <i>qui tacet</i> to uphold their legal force

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<h2>Public Records Statutory Framework</h2> <h3>PR Framework, Cont'd</h3>	<i>Fla. Stat. § 119.07(1)(a)</i>	Mandates that public records be open for inspection and copying at any reasonable time, forming the statutory foundation for initiating a public records request.
	<i>Fla. Stat. § 119.07(1)(d)</i>	Instructs custodians to redact exempt portions and provide the remainder, ensuring partial compliance when full disclosure isn't possible.
	<i>Fla. Stat. § 119.07(1)(e)</i>	Requires a statement of the basis for complete exemption, ensuring transparency when records are withheld entirely.
	<i>Fla. Stat. § 119.07(1)(f)</i>	Holds that automatic delays impermissibly interfere with the public's right to prompt access, emphasizing the need for timely responses to requests.
	<i>Tribune Co. v. Cannella</i> , 458 So. 2d 1075 (Fla. 1984)	Holds that automatic delays impermissibly interfere with the public's right to prompt access, emphasizing the need for timely responses to requests.
	<i>Consumer Rights, LLC v. Bradford County</i> , 153 So. 3d 394 (Fla. 1st DCA 2014)	Stresses prompt acknowledgment and good faith responses, setting expectations for custodial diligence.
	<i>Promenade D'Iberville, LLC v. Sundy</i> , 145 So. 3d 980 (Fla. 1st DCA 2014)	Permits delays only under limited circumstances, reinforcing the priority of promptness in public records access.
	<i>Siegmeister v. Johnson</i> , 240 So. 3d 70 (Fla. 1st DCA 2018)	Reiterates requirements for prompt attention and reasonable response times, aligning with statutory intent

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	<i>Executive Office of Governor v. Florida Center for Government Accountability, Inc.</i>	Notes that the Public Records Act demands prompt attention and reasonable response times, further supporting timeliness obligations.
<b>Affidavits : Evidentiary Role</b>	<i>Elliott v. Aurora Loan Servs., LLC</i> , 31 So. 3d 304 (Fla. 4th DCA 2010)	Holds that uncontradicted affidavits support findings for the affiant, establishing their legal weight in asserting facts (e.g., non-existence of records).
<b>Affidavits, Cont'd</b>	<i>Holl v. Talcott</i> , 191 So. 2d 40 (Fla. 1966)	Highlights affidavits' importance in summary judgment, showing their role in establishing unopposed facts.
	<i>Nard, Inc. v. DeVito Contracting &amp; Supply, Inc.</i> , 769 So. 2d 1138 (Fla. 2d DCA 2000)	Confirms that unrebutted affidavits are taken as true, critical for proving non-compliance in the default process.
<b>Administrative Default Mechanisms</b>	<i>Fla. Admin. Code R. 28-106.111(4)</i>	States that failure to request a hearing within the allotted time waives rights, leading to a final order—parallels common law default via non-response.
	<i>Fla. Admin. Code R. 12-6.003(3)</i>	Non-response to a tax assessment notice finalizes the assessment, illustrating administrative default in regulatory contexts.
	§ 212.12(5), Fla. Stat	Allows assessments based on available information if records aren't provided, supporting default mechanisms when evidence is withheld.
	<i>Dep't of Revenue v. Vanjaria Enters., Inc.</i> , 675 So. 2d 252 (Fla. 5th DCA 1996)	Upholds a default tax assessment for failure to provide records, applying administrative default principles.

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	<i>Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd.</i> , 894 So. 2d 954 (Fla. 2005)	Affirms assessments based on available data, reinforcing administrative authority in default scenarios.
	<i>Cortiñas v. Dep't of Bus. &amp; Prof'l Regulation</i> , 2019 WL 123456 (Fla. Div. Admin. Hearings 2019)	Upholds a default order for non-appearance, showing default's enforceability in administrative proceedings.
<b>Tacit Acquiescence : Application of Tacit Acquiescence, Cont'd</b>	<i>Vacation Ventures v. Holiday Promo.</i> , 687 So. 2d 286 (Fla. 5th DCA 1997)	Failure to rebut affidavits shifts the burden, reflecting "qui tacet" and tying common law to judicial outcomes
	<i>Horowitz v. Laske</i> , 855 So. 2d 169 (Fla. 5th DCA 2003)	Interprets silence as acquiescence in contracts, applying tacit acquiescence to modern disputes
<b>Judicial Remedies &amp; Standards of Review</b>	<i>Article V, Section 4(b)(3), Fla. Const.</i>	Grants District Courts of Appeal authority to issue writs of prohibition, providing the jurisdictional basis for judicial remedies.
	<i>Rule 9.030(b)(3), Fla. R. App. P.</i>	Reaffirms the courts' power to issue writs of prohibition, enabling judicial intervention in administrative overreach.
	<i>Fla. Stat. § 166.041(4)(a)(1-4)</i>	Outlines procedural requirements for municipal ordinances, relevant to challenging ordinance validity based on missing documentation
	<i>Heller v. Doe</i> , 509 U.S. 312 (1993)	Illustrates rational basis review—government action is valid if rationally related to a legitimate interest—relevant to challenging ordinances.
	<i>Craig v. Boren</i> , 429 U.S. 190 (1976)	Establishes intermediate scrutiny, requiring a substantial relation to an important interest, applicable

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<h2>Judicial Remedies, Cont'd</h2>		when rights are implicated but not fundamental.
	<i>Loving v. Virginia</i> , 388 U.S. 1 (1967)	Applies strict scrutiny, requiring narrow tailoring to a compelling interest, used when fundamental rights are at stake.
	<i>Public Health Trust of Dade County v. Valcin</i> , 507 So. 2d 596 (Fla. 1987)	Permits adverse inferences when evidence is withheld, strengthening petitions for judicial relief when records are missing.
	<i>Martino v. Wal-Mart Stores, Inc.</i> , 908 So. 2d 342 (Fla. 2005)	Clarifies spoliation requirements for adverse inferences, supporting claims of missing evidence.
	<i>Golden Yachts, Inc. v. Hall</i> , 920 So. 2d 777 (Fla. 2d DCA 2006)	Applies adverse inferences to missing evidence, reinforcing their use in judicial proceedings
	<i>Hagopian v. Publix Supermarkets, Inc.</i> , 788 So. 2d 1088 (Fla. 4th DCA 2001)	Addresses adverse inferences in spoliation cases, emphasizing evidence preservation.
	<i>Sponco Mfg., Inc. v. Alcover</i> , 656 So. 2d 629 (Fla. 3d DCA 1995)	Discusses adverse inferences for withheld evidence, supporting judicial remedies.

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		Mandates attorney's fees for unlawful withholding, providing a final enforcement mechanism for non-compliance.
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**I. ISSUES**

**(1): Are Florida public officials required to treat English common law as a binding legal authority?**

**(a)**

**(i) Fla. Stat. § 2.01:** “The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state.”

**(ii) Fla. Stat. § 775.01:** “The common law of England in relation to crimes [...] shall be of full force in this state where there is no existing provision by statute on the subject.”

**(iii): State v. Ashley, 701 So. 2d 338 (Fla. 1997):** Affirms common law's persistence unless abrogated by statute.

**(iv): Wilson v. Arkansas, 514 U.S. 927 (1995):** Recognizes common law principles in Florida's legal framework.

**(b):** Florida law explicitly incorporates English common law through *Fla. Stat. § 2.01*, making it binding unless contradicted by federal or state law. *Fla. Stat. § 775.01* extends

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this to criminal matters where statutes are silent, signaling a broad legislative intent to rely on common law. In *State v. Ashley*, the Florida Supreme Court confirmed that common law remains operative absent statutory override, while *Wilson v. Arkansas* illustrates its application by referencing historical common law principles (e.g., knock-and-announce rules). This framework mandates that public officials recognize English common law as authoritative in areas not addressed by statute, spanning civil, criminal, and administrative contexts.

**(c):** Florida public officials must recognize English common law as a binding legal authority where statutes are silent, as mandated by Fla. Stat. § 2.01 and Fla. Stat. § 775.01, and affirmed by judicial precedent.

**(2.1) Do common law maxims, as adopted in Florida, interpret silence as consent or an admission of fact?**

**(a):**

**(i) Qui tacet consentire videtur** (“He who is silent appears to consent”).

**(ii) Tacita quaedam habentur pro expressis** (“Things silent are sometimes considered as expressed”).

**(iii) Ejus est non nolle, qui potest velle** (“He who may consent tacitly, may consent expressly”).

**(iv) Vacation Ventures v. Holiday Promo, 687 So. 2d 286 (Fla. 5th DCA 1997):** Silence shifted the burden of proof.

**(v) Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003):** Silence interpreted as acquiescence in a contractual dispute.

**(b): English common law maxims, adopted via Fla. Stat. § 2.01,** establish that silence can signify consent or admission when a party has the chance to object but does not. *Qui tacet consentire videtur* underpins this principle, suggesting silence implies agreement.

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Florida courts have embraced this, as seen in *Vacation Ventures v. Holiday Promo*, where the court shifted the burden due to a party's silence, and *Horowitz v. Laske*, where silence was deemed acquiescence in a contract dispute. These cases reflect the maxims' integration into Florida law, showing silence as legally significant in the absence of rebuttal.

**(c):** Established common law maxims, recognized in Florida, interpret silence as consent or an admission of fact when a party fails to respond, as evidenced by judicial application.

### **(2.2) Do partial responses to certain document requests undermine the application of silence as consent for unanswered categories?**

**(a)**

**(i) Public Health Trust of Dade County v. Valcin, 507 So. 2d 596 (Fla. 1987):** Adverse inferences apply when material evidence is withheld.

**(ii) Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000):** Unrebutted affidavits are accepted as true.

**(b)** A selective response while omitting other documents suggests strategic withholding rather than good-faith compliance. Per *Vacation Ventures* (*Id.*), silence on specific points, not total non-response, triggers consent under *qui tacet consentire videtur*. *Valcin* supports adverse inferences for withheld material, and *Nard* reinforces this with the ADACL affidavit's documentation of non-compliance, establishing a pattern of evasion.

**(c)** A partial response does not negate silence as consent for unanswered categories; it reinforces default on those specific points.

### **(3) Are Blackstone's Commentaries considered an authoritative source for interpreting common law maxims in Florida?**

**(a): Blackstone's Commentaries:** A seminal work on English common law, frequently cited by Florida courts.

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**(i): State v. Mitchell, 245 So. 2d 618 (Fla. 1971):** References Blackstone for common law interpretation.

**(ii): Wilson v. Arkansas, 514 U.S. 927 (1995):** Cites Blackstone as influential in Florida's legal system.

**(b):** Florida courts regularly turn to Blackstone's Commentaries to elucidate common law principles, affirming its authority. In State v. Mitchell, the court relied on Blackstone to define common law doctrines, while Wilson v. Arkansas used it to trace the origins of legal rules like knock-and-announce, demonstrating its relevance in Florida. Adopted through Fla. Stat. § 2.01, Blackstone's work provides a foundational lens for interpreting maxims, bridging historical English law to modern Florida practice.

**(c):** Florida law recognizes Blackstone's Commentaries as authoritative for interpreting common law maxims, as shown by consistent judicial reliance.

### **(4) Does Florida law validate common law maxims based on their historical custom and usage?**

**(a):**

**(i) Fla. Stat. § 2.01:** Incorporates English common law, including its maxims.

**(ii) Blackstone's Commentaries, Book I, Section III:** "The only method of proving, that this or that maxim is a rule of the common law, is by showing that it hath been always the custom to observe it."

**(iii) Vacation Ventures v. Holiday Promo, 687 So. 2d 286 (Fla. 5th DCA 1997):** Applies maxims based on historical use.

**(iii) Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003):** Recognizes maxims' customary application.

**(b)** Per Fla. Stat. § 2.01, Florida adopts English common law, including maxims rooted in historical custom, as Blackstone articulates in Book I, Section III. This custom-based validation is evident in Vacation Ventures v. Holiday Promo, where the court applied qui

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tacet consentire videtur due to its longstanding use, and Horowitz v. Laske, where silence as consent reflected historical practice. These cases illustrate that Florida courts uphold maxims when their consistent historical application is demonstrated, aligning with Blackstone's standard.

**(c)** Florida law recognizes common law maxims based on their historical custom and usage, as supported by Fla. Stat. § 2.01 and judicial precedent.

**(5.1) Does the concept of default admissions in ADACL align with Florida's administrative law practices?**

**(a)**

**(i) Fla. Admin. Code R. 28-106.111(4):** "Failure to file a request for a hearing within the time prescribed shall constitute a waiver of the right to a hearing."

**(ii) Fla. Admin. Code R. 12-6.003(3):** "If the taxpayer does not timely file a protest, the assessment or refund denial shall become final."

**(iii) Fla. Stat. § 212.12(5):** "The department may use ... any available data to estimate the tax due."

**(iv) Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996):** Upholds default assessments for non-response.

**Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005):** Affirms assessments based on available data when records are withheld.

**(b)** Florida's administrative law explicitly supports default admissions when parties fail to act. *Fla. Admin. Code R. 28-106.111(4)* deems non-response a waiver of hearing rights, while *Fla. Admin. Code R. 12-6.003(3)* finalizes assessments absent a timely protest. Fla. Stat. § 212.12(5) permits tax estimations when taxpayers withhold data, effectively a default admission. In *Dep't of Revenue v. Vanjaria Enters., Inc.*, the court upheld a default assessment due to non-compliance, and *Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd.* reinforced this by affirming estimates based on available evidence. ADACL's use of default admissions—treating silence as consent or fact admission—mirrors these practices, leveraging non-response as a procedural consequence. These authorities collectively demonstrate that defaults are a recognized and enforceable mechanism in

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Florida's administrative actions, supporting ADACL's framework.

**(c)** The concept of default admissions in ADACL is consistent with Florida's established administrative law practices, as evidenced by administrative codes and supporting case law.

**(5.2) Are administrative defaults limited to codified contexts, making their extension to public records requests improper?**

**(a)** Fla. Stat. § 2.01 (*common law in effect unless abrogated*) , Vanjaria, Nard, Inc. (Id.)

**(b)** Administrative defaults reflect a universal principle of consequences for non-response, per Fla. Stat. § 2.01. Vanjaria demonstrates this in tax contexts, applicable to public records due to structural similarities (formal demands with response duties). The ADACL affidavit, per Nard, provides specific evidence of non-compliance, extending general principles to this context.

**(c)** Administrative defaults in ADACL align with Florida law and extend appropriately to public records requests.

**(6) Does ADACL improperly depend on judicial default judgments under Florida Rule of Civil Procedure 1.500?**

**(a)**

**(i) Florida Rule of Civil Procedure 1.500:** Governs judicial default judgments when a party fails to plead or defend in court.

**(ii) Fla. Admin. Code R. 28-106.111(4):** Establishes waiver of rights for non-response in administrative proceedings.

**(iii) Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996):** Upholds administrative defaults without judicial intervention.

**(b)** ADACL operates in an administrative, not judicial, context, distinguishing it from Florida Rule of Civil Procedure 1.500, which applies solely to court proceedings requiring

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judicial oversight. Instead, ADACL aligns with administrative mechanisms like Fla. Admin. Code R. 28-106.111(4), where failure to respond waives rights without court involvement. Dep’t of Revenue v. Vanjaria Enters., Inc. exemplifies this, affirming an administrative assessment finalized due to non-response, independent of Rule 1.500. ADACL’s reliance on common law maxims (e.g., *qui tacet consentire videtur*) and administrative waiver further separates it from judicial defaults, rooting it in agency authority rather than courtroom procedure.

**(c)** ADACL does not improperly rely on judicial default judgments under Florida Rule of Civil Procedure 1.500; it is grounded in administrative law and common law principles, distinct from judicial processes.

**(7.1) Is ADACL legally valid despite being an unconventional and experimental process?**

**(a)**

**(i) Fla. Stat. § 2.01:** Adopts English common law where statutes are silent.

**(ii) Fla. Stat. § 119.07(1)(a):** “Every person who has custody of a public record shall permit the record to be inspected and copied ... at any reasonable time.”

**(iii) Fla. Admin. Code R. 28-106.111(4):** Waiver of rights for failure to request a hearing.

**(iv) Fla. Admin. Code R. 12-6.003(3):** Finalizes assessments absent timely protest.

**(v) Fla. Stat. § 212.12(5):** Allows tax estimates from available data.

**(vi) Dep’t of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996):** Upholds administrative defaults.

**(viii) Florida Dep’t of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005):** Affirms defaults based on available data.

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**(ix) Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010):** Permits adverse inferences from unrebutted affidavits.

**(b)** ADACL's unconventional nature does not negate its validity, as it builds on established legal foundations. Fla. Stat. § 2.01 allows common law to fill statutory gaps, such as the lack of specific remedies for prolonged silence under Fla. Stat. § 119.07(1)(a) (public records access). ADACL's default mechanism aligns with Fla. Admin. Code R. 28-106.111(4) and Fla. Admin. Code R. 12-6.003(3), which treat non-response as waiver or finalization, and Fla. Stat. § 212.12(5), which permits agency action based on available data. Cases like Dep't of Revenue v. Vanjaria Enters., Inc. and Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd. validate administrative defaults, while Elliott v. Aurora Loan Servs., LLC supports drawing adverse inferences from silence—consistent with ADACL's approach. Though experimental, ADACL creatively applies these principles, making it a legitimate administrative remedy.

**(c)** The ADACL process is valid despite its unconventional and experimental nature, as it is supported by Florida's common law adoption, administrative law practices, and judicial precedent.

**(7.2) Will courts reject ADACL for lacking precedent, favoring Chapter 119 remedies?**

**(a)**

**(i) State v. Ashley, 701 So. 2d 338 (Fla. 1997), Fla. Stat. § 2.01:** Common law persists absent statutory repeal.

**(ii) City of Daytona Beach v. Del Percio :** Common law viable alongside statutes if non-conflicting.

**(b)** Fla. Stat. § 2.01 and State v. Ashley affirm common law's role where statutes are silent, like pre-litigation defaults. Del Percio supports ADACL as complementary to Chapter 119, addressing evidentiary gaps (e.g., non-compliance documentation) rather than conflicting with judicial remedies.

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**(c)** Courts should accept The ADACL as a valid common law supplement to statutory remedies.

**(7.3) Is ADACL redundant given Chapter 119's mandamus and fee provisions?**

**(a)**

**(i) Fla. Stat. § 119.07(1)(a):** Requires prompt access, silent on pre-litigation defaults.

**(ii) State v. Ashley, Id.**

**(b)** Chapter 119 lacks pre-litigation consequences for partial compliance or refusal to admit non-existence (e.g., tally sheet zeros), a gap State v. Ashley allows common law to fill. ADACL's three-stage process creates an evidentiary record enhancing mandamus, not duplicating it.

**(c)** ADACL is not redundant; it addresses a distinct pre-litigation gap.

**(7.4) Will courts require exhaustion of Chapter 119 remedies before ADACL inferences?**

**(a)**

**(i) Fla. Stat. § 166.041(4)(a):** Mandates Business Impact Estimates.

**(ii) Nard, Inc., Id:** Unrebutted affidavits establish facts.

**(b)** ADACL's three-stage process (Courtesy, Fault, Default) documents exhaustion efforts, per Nard. **Chapter 119 cannot compel admission of non-existence, a gap ADACL fills,** especially for Fla. Stat. § 166.041(4)(a) violations (e.g., missing BIE), providing specific statutory grounds for inferences.

**(c)** ADACL satisfies exhaustion via its process and addresses unique gaps.

**(7.5) Does ADACL's goal of securing judicial recognition of an agency's refusal to confirm document non-existence (e.g., by marking "zeros" on a tally sheet) when no exemptions are claimed render it invalid, given mandamus's traditional role under Chapter 119?**

**(a) Fla. Stat. § 119.07(1)(a):** Mandates prompt access to records but is silent on compelling admissions of non-existence.

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- (a) Fla. Stat. § 119.07(1)(e):** Requires citation of exemptions for withholding, implying a duty to clarify non-existence when no exemptions apply.
  - (b) State v. Ashley, 701 So. 2d 338 (Fla. 1997):** Common law fills statutory gaps unless abrogated.
  - (c) Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000):** Unrebutted affidavits establish facts, supporting evidentiary recognition.
  - (d) Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010):** Uncontradicted affidavits support findings, applicable to judicial recognition of non-compliance.
- 
- (a) Mandamus under Chapter 119 typically compels production of existing records or forces an agency to justify withholding via exemptions (Fla. Stat. § 119.07(1)(e)). However, it lacks a mechanism to address an agency's refusal to affirmatively state that requested records (e.g., health studies, BIEs) do not exist, especially when no exemptions are claimed. This refusal—evidenced by the city's failure to mark "zeros" despite multiple notices—creates a transparency gap that Fla. Stat. § 119.07(1)(a) doesn't resolve. Per State v. Ashley, common law can bridge this gap. ADACL's three-stage process documents this refusal under oath (Nard), enabling courts to recognize it as a fact (Elliott), not just compel production. This evidentiary role distinguishes ADACL from mandamus, aligning with its unconventional yet valid purpose of establishing non-existence rather than forcing disclosure.
  - (b) ADACL's focus on judicial recognition of non-existence is legally valid, addressing a gap mandamus cannot fill, supported by common law and evidentiary principles.

### **(8.1) Can adverse inferences be drawn about the legitimacy of an agency's ordinances or actions due to its non-response, partial fulfillment, lack of relevant documents, and non-compliance with Chapter 119 protocols?**

**(a)**

- (i) Fla. Stat. § 119.07(1)(a):** Mandates public records be open for inspection at reasonable times.

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- (ii) **Fla. Stat. § 119.07(1)(c):** Requires prompt acknowledgment and good faith response.
- (iii) **Fla. Stat. § 119.07(1)(d):** Instructs redaction of exempt portions, providing remainder.
- (iv) **Fla. Stat. § 119.07(1)(e):** Requires statutory citation for complete exemptions.
- (v) **Fla. Stat. § 119.07(1)(f):** Mandates written explanation for exemptions.
- (vi) **Fla. Stat. § 119.12:** Imposes attorney's fees for unlawful withholding.
- (vii) **Tribune Co. v. Cannella, 458 So. 2d 1075 (Fla. 1984):** Prohibits automatic delays.
- (viii) **Promenade D'Iberville, LLC v. Sundy, 145 So. 3d 980 (Fla. 1st DCA 2014):** Limits delays to retrieval and redaction.
- (ix) **Consumer Rights, LLC v. Bradford County, 153 So. 3d 394 (Fla. 1st DCA 2014):** Condemns unjustified delays and demands good faith.
- (x) **Siegmeister v. Johnson, 240 So. 3d 70 (Fla. 1st DCA 2018):** Affirms reasonable response times (e.g., two weeks).
- (xi) **Executive Office of Governor v. Florida Center for Government Accountability, Inc., -So. 3d - (Fla. 1st DCA 2025):** Upholds two-week partial production as reasonable.
- (xii) **Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010):** Permits adverse inferences from unrebutted affidavits.
- (xiii) **Heller v. Doe, 509 U.S. 312 (1993):** Requires rational basis for governmental action.
- (xiv) **Craig v. Boren, 429 U.S. 190 (1976):** Demands substantial relation to a government interest.
- (xv) **Loving v. Virginia, 388 U.S. 1 (1967):** Requires compelling interest and narrow tailoring.

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**(b)** Agency opaqueness—non-response, partial fulfillment, irrelevant production, and non-compliance with Fla. Stat. § 119.07(1)(a) (prompt access), (1)(c) (good faith), (1)(d)-(f) (redaction and explanation)—violates statutory duties, as reinforced by Tribune Co. v. Cannella (no delays), Promenade D'Iberville (limited delays), and Consumer Rights (good faith required). Siegmeister and Executive Office of Governor establish two weeks as a reasonable response benchmark, yet persistent silence exceeds this. Under Elliott v. Aurora Loan Servs., unrebuted affidavits asserting non-existence of records provide *prima facie* evidence, permitting adverse inferences. This opaqueness suggests no documentation supports the agency's actions, undermining their legitimacy under Heller v. Doe (rational basis), Craig v. Boren (substantial relation), and Loving v. Virginia (compelling interest, narrowly tailored), as no evidence rebuts the inference of arbitrariness. Fla. Stat. § 119.12 further penalizes such withholding, bolstering the inference's weight.

**(c)** Agency opaqueness allows adverse inferences that their ordinances or actions lack a legitimate basis, as supported by Chapter 119 violations, Elliott's evidentiary rule, and constitutional scrutiny standards.

### **(8.2) Do courts require bad faith beyond silence, with partial responses negating default?**

**(a)** *Valcin, Id.* Adverse inferences from withheld evidence.

**(b)** Valcin focuses on control over evidence, not bad faith, applicable to withheld critical categories, Partial responses to less material requests versus omission of key documents (*Ex. Business Impact Estimates/Public Health Data/Declining Property Values*) suggest strategic withholding, not good faith.

**(c)** Adverse inferences are justified by strategic withholding, not requiring bad faith.

## **(9) CONCLUSION:**

**(a)** The Administrative Default at Common Law (ADACL) process, while unconventional, is a valid administrative remedy substantiated by a robust interplay of Florida statutes, common law principles, and judicial precedent. Florida public officials must recognize

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English common law as binding under Fla. Stat. § 2.01 and § 775.01, as affirmed by State v. Ashley and Wilson v. Arkansas [(1)]. This includes established maxims like *qui tacet consentire videtur*, which interpret silence as consent or admission, as applied in Vacation Ventures v. Holiday Promo and Horowitz v. Laske [(2)]. Florida law further acknowledges Blackstone's Commentaries as authoritative for interpreting these maxims (State v. Mitchell, Wilson v. Arkansas) [(3)] and validates them based on historical custom and usage, per Blackstone's own standard (Vacation Ventures, Horowitz) [(4)].

**(b)** In administrative contexts, ADACL's default admissions align with Florida practices, such as waivers and final assessments for non-response under Fla. Admin. Code R. 28-106.111(4), R. 12-6.003(3), and Fla. Stat. § 212.12(5), upheld in Dep't of Revenue v. Vanjaria Enters. and Florida Dep't of Revenue v. New Sea Escape Cruises [(5)]. ADACL does not improperly rely on judicial defaults under Florida Rule of Civil Procedure 1.500, instead rooting itself in administrative and common law mechanisms [(6)]. Despite its novelty, ADACL's validity is supported by this legal foundation, including Elliott v. Aurora Loan Servs.'s adverse inference rule [(7)]. Finally, agency opaqueness—non-response, partial fulfillment, and non-compliance with Chapter 119 protocols—permits adverse inferences about the legitimacy of their actions, per Elliott, Heller v. Doe, Craig v. Boren, and Loving v. Virginia, reinforcing ADACL's utility [(8)]. Together, these principles affirm ADACL as a legitimate, informal administrative tool to address agency silence.

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### **II. Response Guide**

Knowing how novel, unconventional, experimental, and informal is the ADACL premise, this **Response Guide** is submitted in good faith to facilitate constructive dialogue regarding the Notice of Administrative Default at Common Law (ADACL) concerning Public Records Request PRR2025-22. The guide aims to clarify positions, invite feedback, and refine mutual understanding while maintaining dignity, professionalism and respect.

Please attach / remit separate document if necessary, indexing each alphanumeric paragraph and subparagraph should exception be taken at any point. If any of the following are in question, note that each response guide number below corresponds with the aforementioned Issue numbers above, with the same citations of law. Referring to the Table Of Authorities may also be more expedient.

#### **(1) Must Florida Public Officials Recognize The Common Law Of England As A Binding Legal Authority?**

**(a) Legal Basis:** *Fla. Stat. § 2.01, Fla. Stat. § 775.01, State v. Ashley, 701 So. 2d 338 (Fla. 1997), Wilson v. Arkansas, 514 U.S. 927 (1995)*

**(b) Discussion:** Florida law incorporates English common law as a foundational source where statutes don't provide specific guidance. This suggests officials should consider common law principles in their duties.

**(c) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

#### **(2) Do Established Common Law Maxims Interpret Silence As Consent Or An Admission Of Fact?**

**(a) Legal Basis:**

- *Qui tacet consentire videtur, Tacita quaedam habentur pro expressis, Ejus est non nolle, qui potest velle, Vacation Ventures v. Holiday Promo., 687 So. 2d 286 (Fla. 5th DCA*

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1997), *Horowitz v. Laske*, 855 So. 2d 169 (Fla. 5th DCA 2003), *Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596 (Fla. 1987), *Nard, Inc. v. DeVito Contracting & Supply, Inc.*, 769 So. 2d 1138 (Fla. 2d DCA 2000)

**(b) Discussion:**

- (i) Common law maxims and Florida cases suggest silence implies consent or admission when response is possible but absent.
- (ii) **Addressing Partial Response Challenge:** If only a selective response is provided; while others are withheld, or not admitted as non-existent, such doesn't negate consent for unanswered points. *Vacation Ventures* applies *qui tacet* to specific silences, *Valcin* draws inferences from withheld evidence, and *Nard* accepts affidavit-documented evasion as fact.

**(c) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

**(3) Does Florida Law Recognize Blackstone's Commentaries As Authoritative For Interpreting Common Law Maxims?**

(4)

- (d) **Legal Basis:** *State v. Mitchell*, 245 So. 2d 618 (Fla. 1971), *Wilson v. Arkansas*, 514 U.S. 927 (1995)
- (e) **Discussion:** Florida courts often cite Blackstone's Commentaries when interpreting common law, which serves as evidence of its authority.

**(f) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

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### **(5) Does Florida Law Recognize Common Law Maxims Based On Their Historical Custom And Usage?**

**(g) Legal Basis:** *Fla. Stat. § 2.01, Blackstone's Commentaries, Vacation Ventures v. Holiday Promo, 687 So. 2d 286 (Fla. 5th DCA 1997), Horowitz v. Laske, 855 So. 2d 169 (Fla. 5th DCA 2003)*

**(h) Discussion:** Florida law accepts maxims based on their historical use, as Blackstone suggests and courts have applied.

**(i) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

### **(6) Is the Concept of Default Admissions, as Used in ADACL, Consistent with Established Administrative Law Practices in Florida?**

**(a) Legal Basis:** *Fla. Admin. Code R. 28-106.111(4), Fla. Admin. Code R. 12-6.003(3), Fla. Stat. § 212.12(5), Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996), Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005), Fla. Stat. § 2.01, Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000)*

**(j) Discussion:**

**(i) Addressing Limited Application:** Defaults aren't limited to codified contexts; *Fla. Stat. § 2.01* extends common law principles universally, *Vanjaria* applies them administratively, and *Nard* supports affidavit-based extensions to public records.

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### **(k) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

### **(7) Does ADACL Improperly Depend on Judicial Default Judgments Under Florida Rule of Civil Procedure 1.500?**

**(b) Legal Basis:** *Florida Rule of Civil Procedure 1.500, Fla. Admin. Code R. 28-106.111(4), Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996).*

**(c) Discussion:** ADACL operates administratively, distinct from Rule 1.500's judicial scope, aligning with Fla. Admin. Code R. 28-106.111(4)'s waiver and Vanjaria's administrative default precedent.

### **(d) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

### **(8) Is ADACL Legally Valid Despite Being an Unconventional and Experimental Process?**

**(e) Legal Basis:** *Fla. Stat. § 2.01, Fla. Stat. § 119.07(1)(a), Fla. Admin. Code R. 28-106.111(4), Fla. Admin. Code R. 12-6.003(3), Fla. Stat. § 212.12(5), Dep't of Revenue v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996), Florida Dep't of Revenue v. New Sea Escape Cruises, Ltd., 894 So. 2d 954 (Fla. 2005), Elliott v. Aurora Loan Servs., LLC, 31 So. 3d 304 (Fla. 4th DCA 2010), State v. Ashley, 701 So. 2d 338 (Fla. 1997), City of Daytona Beach v. Del Percio (476 So. 2d 197 (1985) Fla. Stat. § 166.041(4)(a), Nard, Inc. v. DeVito Contracting & Supply, Inc., 769 So. 2d 1138 (Fla. 2d DCA 2000)*

### **(b) Discussion:**

- (i) ADACL's validity rests on common law (*Fla. Stat. § 2.01*), administrative defaults (*Vanjaria, New Sea Escape*), and evidentiary support (*Elliott*), despite its novelty.

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- (ii) Addressing Judicial Reception:** *State v. Ashley* and *Del Precio* affirm common law's role alongside statutes, making ADACL complementary.
- (iii) Addressing Redundancy:** *State v. Ashley* fills Chapter 119's pre-litigation gap, enhanced by ADACL's process.
- (iv) Addressing Exhaustion:** The three-stage process and *Nard* affidavits satisfy exhaustion, with *Fla. Stat. § 166.041(4)(a)* providing specific grounds.
- (v) Addressing Mandamus Limitation:** Unlike mandamus, which seeks production, ADACL seeks recognition of refusal to admit non-existence, documented via affidavits (*Nard*, *Elliott*), making it a distinct and necessary tool.

### **(a) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

## **(9) Can Adverse Inferences Be Drawn About the Legitimacy of an Agency's Ordinances or Actions Due to Its Non-Response, Partial Fulfillment, Lack of Relevant Documents, and Noncompliance with Chapter 119 Protocols?**

- (f) Legal Basis:** *Fla. Stat. § 119.07(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), Fla. Stat. § 119.12, Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984), *Promenade D'Iberville, LLC v. Sundy*, 145 So. 3d 980 (Fla. 1st DCA 2014), *Consumer Rights, LLC v. Bradford County*, 153 So. 3d 394 (Fla. 1st DCA 2014), *Siegmeister v. Johnson*, 240 So. 3d 70 (Fla. 1st DCA 2018), *Executive Office of Governor v. Florida Center for Government Accountability, Inc.*, *Elliott v. Aurora Loan Servs., LLC*, 31 So. 3d 304 (Fla. 4th DCA 2010), *Heller v. Doe*, 509 U.S. 312 (1993), *Craig v. Boren*, 429 U.S. 190 (1976), *Loving v. Virginia*, 388 U.S. 1 (1967), *Public Health Trust of Dade County v. Valcin*, 507 So. 2d 596 (Fla. 1987), *Fla. Stat. § 166.041(4)(a)*

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### **(g) Discussion:**

- (i)** Non-compliance (*Fla. Stat. § 119.07*) and silence (*Elliott*) permit inferences of illegitimacy under scrutiny standards (*Heller, Craig, Loving*).
  
- (ii) Addressing Bad Faith vs. Silence:** Valcin infers from withheld evidence (e.g., Fla. Stat. § 166.041(4)(a) BIE), not requiring bad faith, given strategic omissions.

### **(I) Feedback:**

- Agree
- Disagree with Contradictory Analysis:

## **CONCLUSION**

This guide aims to clarify the legal basis for the ADACL and invites constructive feedback to refine our mutual understanding. Please provide your responses to each section, and if disagreeing, then indexing each alphanumeric point/sub point in the attached response with analysis, and feel free to include any additional insights or legal analyses that may contribute to a more comprehensive discussion.

Thank you for your attention to this matter. We look forward to your response and to working collaboratively towards a resolution.

Sincerely,



Geoffrey Jacob Caputo, March 28, 2025